S.B. CIVIL WRIT PETITION NO.2945/2005

National Highways Authority of India, Chittorgarh and anr.

vs.

Civil Judge (JD), Mavali and ors.

Date : 24.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. MS Singhvi, for the petitioners.

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Heard learned counsel for the petitioner.

The petitioner's grievance is that according to the petitioner, after the decision of this Court given in SB Civil Writ Petition No.5945/2004 dated 23.3.2005 (by me), the trial court should not have continued the stay order.

According to learned counsel for the petitioner, the arguments on the stay petition were heard on 23.4.2005 and more than three weeks have already passed but the order has not been pronounced by the Court of Civil Judge (JD) Mavali, the charge of which is with Civil Judge (JD), Vallabhnagar.

The writ petition was dismissed by this Court on 23.3.2005. Thereafter the trial court heard the arguments on injunction application of the non-petitioner which was pending since before the decision of SB Civil Writ Petition No.5945/2004. The arguments were heard on 23.4.2005 by the trial court. The hearing of both the parties is mandatory before passing any order on injunction application.

The delay in appreciating the subsequent event may sometime cause hardship and for that the parties may have

grievance legitimately and in this case, this Court observes that the grievance of the petitioner is just and the petitioner submitted before the trial court that in view of the order passed by this Court, the trial court should not continue the stay order.

It is also true that the matter has been delayed by the rial court as the order has been reserved on the injunction application for such a long period, therefore, at the most, the trial court can be directed to pass the order as early as possible and without any further delay. Since the interim stay order is yet sub-judice before the trial court, therefore, this Court would not like to usurp the power of the trial court for vacating the interim order when the order is reserved by the trial court.

In view of the above, the prayer for setting aside the interim order at this juncture cannot be granted to the petitioner.

Accordingly, the writ petition is disposed of with a direction to the trial court to decide the interim application expeditiously without any further delay.

Copy of this order be sent to the trial court.

(PRAKASH TATIA), J.

S.Phophaliya